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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,904	09/18/2001	Jie Zhang	8747.82	8603
21999	7590	02/18/2005	EXAMINER	
KIRTON AND MCCONKIE 1800 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE P O BOX 45120 SALT LAKE CITY, UT 84145-0120			GEORGE, KONATA M	
		ART UNIT		PAPER NUMBER
		1616		
DATE MAILED: 02/18/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/954,904	ZHANG ET AL.	
	Examiner	Art Unit	
	Konata M. George	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04 October 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15, 17 and 19-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6, 11-15, 17 and 19-23 is/are rejected.

7) Claim(s) 7-10 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claims 1-15, 17 and 19-23 are pending in this application.

Action Summary

1. The rejection of claims 1-15, 17 and 19-23 under 35 U.S.C. 112, second paragraphs as being indefinite is hereby withdrawn with respect to applicant showing in the specification how to "pre-determine the duration of time".
2. The rejection of claims 1-6, 11-15, 19 and 22 under 35 U.S.C. 102(b) as being unpatentable over Argaud is hereby withdrawn with respect to applicants arguments.
3. The rejection of claim 23 under 35 U.S.C. 103 (a) over Argaud is being maintained for the reasons stated in the previous office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 11-15, 17 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argaud (US 4,963,360).

See previous office action dated June 30, 2004 for statement of rejection.

Response to Arguments

5. Applicant's arguments filed October 4, 2004 have been fully considered but they are not persuasive.

Applicants' argue that the prior art of Argaud does not disclose the claimed invention. It is argued that Argaud allows oxygen to enter uncontrolled into the system; an exothermic package separated from the oxygen by only a bag and the package is exposed to oxygen along the entire surface area. It is argued that the present invention claims a titrated exothermic reaction tightly separated from oxygen by air impermeable barriers. It is the position of the examiner that Argaud teaches the claimed invention.

Claim 1 is directed towards a controlled delivery device having a temperature modification apparatus capable of controlling and selectively modifying a magnitude and duration of heat and wherein the apparatus heats the skin for a pre-determine temperature range and duration of time. It is the position of the examiner that since the applicants' have not described in detail, in claim 1, what is considered a temperature modification apparatus, then the exothermic layer of the device as described by Argaud can apply. Applicant in claim 2 teaches that the chamber having at least one side that allows air to enter. The invention of the prior art has at least one side that allows air to enter. With respect to duration of heat, it would be controlled by the amount of oxygen reacting with the exothermic layer, which could be determined by one of ordinary skill in that art. With respect to duration of time, it would depend on the amount of time the oxygen is exposed to the exothermic layer.

Allowable Subject Matter

6. Claims 7-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach a transdermal device that comprises a temperature modification apparatus wherein the apparatus is capable of generating heat when supplied with electricity.

Conclusion

7. Claims 1-6, 11-15, 17 and 19-23 are rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (571) 272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Konata M. George

Gary L. Kunz
GARY KUNZ
SUPERVISORY PATENT EXAMINER
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